

AMENDED IN SENATE MAY 15, 2012

AMENDED IN SENATE APRIL 10, 2012

SENATE BILL

No. 1179

Introduced by Senator Walters

February 22, 2012

An act *to add Section 19136.9 to, and to add and repeal Sections 17053.81 and 23625 of, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.*

LEGISLATIVE COUNSEL'S DIGEST

SB 1179, as amended, Walters. Income taxes: credit: manufacturers.

The Personal Income Tax Law and the Corporation Tax Law authorize various credits against the taxes imposed by those laws, including a credit in an amount equal to \$3,000 for each full-time employee hired during the taxable year by a qualified employer, as defined.

This bill would authorize a credit against the taxes imposed by the Personal Income Tax Law and the Corporation Tax Law in an amount equal to \$3,000 for each disabled veteran, as defined, hired as a qualified full-time employee during the taxable year by a qualified employer, as defined.

This bill would take effect immediately as a tax levy.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 17053.81 is added to the Revenue and
- 2 Taxation Code, to read:

1 17053.81. (a) For each taxable year beginning on or after
2 January 1, 2013, there shall be allowed as a credit against the “net
3 tax,” as defined in Section 17039, three thousand dollars (\$3,000)
4 for each net increase in qualified full-time employees, as specified
5 in subdivision (c), hired during the taxable year by a qualified
6 employer.

7 (b) For purposes of this section:

8 ~~(1) “Acquired” includes any gift, inheritance, transfer incident~~
9 ~~to divorce, or any other transfer, whether or not for consideration.~~

10 ~~(2)~~

11 (1) “Qualified full-time employee” means any of the following:

12 (A) An employee who is a disabled veteran, as defined in
13 Section 999 of the Military and Veterans Code, who was paid
14 qualified wages during the taxable year by the qualified employer
15 for services of not less than an average of 35 hours per week.

16 (B) An employee who is a disabled veteran, as defined in Section
17 999 of the Military and Veterans Code, who was a salaried
18 employee and was paid compensation during the taxable year for
19 full-time employment, within the meaning of Section 515 of the
20 Labor Code, by the qualified employer.

21 ~~(3)~~

22 (2) A “qualified *full-time* employee” shall not include any of
23 the following:

24 (A) An employee certified as a qualified employee in an
25 enterprise zone designated in accordance with Chapter 12.8
26 (commencing with Section 7070) of Division 7 of Title 1 of the
27 Government Code.

28 (B) An employee certified as a qualified disadvantaged
29 individual in a manufacturing enhancement area designated in
30 accordance with Section 7073.8 of the Government Code.

31 (C) An employee certified as a qualified employee in a targeted
32 tax area designated in accordance with Section 7097 of the
33 Government Code.

34 (D) An employee whose wages are included in calculating any
35 other credit allowed under this part.

36 ~~(4)~~

37 (3) “Qualified employer” means a taxpayer that is primarily
38 engaged in the lines of business classified in Code 339113 of the
39 North American Industry Classification System (NAICS) published

1 by the United States Office of Management and Budget (OMB),
2 2012 edition.

3 ~~(5)~~

4 (4) “Qualified wages” means wages subject to Division 6
5 (commencing with Section 13000) of the Unemployment Insurance
6 Code.

7 ~~(6)~~

8 (5) “Annual full-time equivalent” means either of the following:

9 (A) In the case of a full-time employee paid hourly qualified
10 wages, “annual full-time equivalent” means the total number of
11 hours worked for the taxpayer by the employee (not to exceed
12 2,000 hours per employee) divided by 2,000.

13 (B) In the case of a salaried full-time employee, “annual
14 full-time equivalent” means the total number of weeks worked for
15 the taxpayer by the employee divided by 52.

16 (c) The net increase in qualified full-time employees of a
17 qualified employer shall be determined as provided by this
18 subdivision:

19 (1) (A) The net increase in qualified full-time employees shall
20 be determined on an annual full-time equivalent basis by
21 subtracting from the amount determined in subparagraph (C) the
22 amount determined in subparagraph (B).

23 (B) The total number of qualified full-time employees employed
24 in the preceding taxable year by the taxpayer and by any trade or
25 business acquired by the taxpayer during the current taxable year.

26 (C) The total number of full-time employees employed in the
27 current taxable year by the taxpayer and by any trade or business
28 acquired during the current taxable year.

29 (2) For taxpayers who first commence doing business in this
30 state during the taxable year, the number of full-time employees
31 for the immediately preceding prior taxable year shall be zero.

32 (d) In the case where the credit allowed by this section exceeds
33 the “net tax,” the excess may be carried over to reduce the “net
34 tax” in the following year, and succeeding seven years if necessary,
35 until the credit is exhausted.

36 (e) Any deduction otherwise allowed under this part for qualified
37 wages shall not be reduced by the amount of the credit allowed
38 under this section.

39 (f) For purposes of this section:

1 (1) All employees of the trades or businesses that are treated as
2 related under either Section 267, 318, or 707 of the Internal
3 Revenue Code shall be treated as employed by a single taxpayer.

4 (2) In determining whether the taxpayer has first commenced
5 doing business in this state during the taxable year, the provisions
6 of subdivision (f) of Section 17276.20, without application of
7 paragraph (7) of that subdivision, shall apply.

8 (g) (1) (A) Credit under this section and Section 23625 shall
9 be allowed only for credits claimed on timely filed original returns
10 received by the Franchise Tax Board on or before the cut-off date
11 established by the Franchise Tax Board.

12 (B) For purposes of this paragraph, the cut-off date shall be the
13 last day of the calendar quarter within which the Franchise Tax
14 Board estimates it will have received timely filed original returns
15 claiming credits under this section and Section 23625 that
16 cumulatively total ~~one hundred million dollars (\$100,000,000)~~
17 *twenty-five million dollars (\$25,000,000)* for all taxable years.

18 (2) The date a return is received shall be determined by the
19 Franchise Tax Board.

20 (3) (A) The determinations of the Franchise Tax Board with
21 respect to the cut-off date, the date a return is received, and whether
22 a return has been timely filed for purposes of this subdivision may
23 not be reviewed in any administrative or judicial proceeding.

24 (B) Any disallowance of a credit claimed due to a determination
25 under this subdivision, including the application of the limitation
26 specified in paragraph (1), shall be treated as a mathematical error
27 appearing on the return. Any amount of tax resulting from such
28 disallowance may be assessed by the Franchise Tax Board in the
29 same manner as provided by Section 19051.

30 (4) The Franchise Tax Board shall periodically provide notice
31 on its Internet Web site with respect to the amount of credit under
32 this section and Section 23625 claimed on timely filed original
33 returns received by the Franchise Tax Board.

34 (h) (1) The Franchise Tax Board may prescribe rules,
35 guidelines, or procedures necessary or appropriate to carry out the
36 purposes of this section, including any guidelines regarding the
37 limitation on total credits allowable under this section and Section
38 23625 and guidelines necessary to avoid the application of
39 paragraph (2) of subdivision (f) through split-ups, shell

1 corporations, partnerships, tiered ownership structures, or
2 otherwise.

3 (2) Chapter 3.5 (commencing with Section 11340) of Part 1 of
4 Division 3 of Title 2 of the Government Code does not apply to
5 any standard, criterion, procedure, determination, rule, notice, or
6 guideline established or issued by the Franchise Tax Board
7 pursuant to this section.

8 (i) This section shall remain in effect only until December 1 of
9 the calendar year after the year of the cut-off date, and as of that
10 December 1 is repealed.

11 *SEC. 2. Section 19136.9 is added to the Revenue and Taxation*
12 *Code, to read:*

13 *19136.9. (a) No addition to tax shall be made under Section*
14 *19136 with respect to any underpayment of an installment to the*
15 *extent that the underpayment was created or increased by the*
16 *disallowance of a credit under subdivision (g) of Section 17053.81.*

17 *(b) No addition to tax shall be made under Section 19142 with*
18 *respect to any underpayment of an installment to the extent that*
19 *the underpayment was created or increased by the disallowance*
20 *of a credit under subdivision (g) of Section 23625.*

21 *(c) The Franchise Tax Board shall adopt procedures, forms,*
22 *and instructions necessary to implement this section in a*
23 *reasonable manner.*

24 ~~SEC. 2.~~

25 *SEC. 3. Section 23625 is added to the Revenue and Taxation*
26 *Code, to read:*

27 *23625. (a) For each taxable year beginning on or after January*
28 *1, 2013, there shall be allowed as a credit against the "tax," as*
29 *defined in Section 23036, three thousand dollars (\$3,000) for each*
30 *net increase in qualified full-time employees, as specified in*
31 *subdivision (c), hired during the taxable year by a qualified*
32 *employer.*

33 *(b) For purposes of this section:*

34 ~~*(1) "Acquired" includes any gift, inheritance, transfer incident*~~
35 ~~*to divorce, or any other transfer, whether or not for consideration.*~~

36 ~~*(2)*~~

37 *(1) "Qualified full-time employee" means any of the following:*

38 *(A) An employee who is a disabled veteran, as defined in*
39 *Section 999 of the Military and Veterans Code, who was paid*

1 qualified wages during the taxable year by the qualified employer
2 for services of not less than an average of 35 hours per week.

3 (B) An employee who is a disabled veteran, as defined in Section
4 999 of the Military and Veterans Code, who was a salaried
5 employee and was paid compensation during the taxable year for
6 full-time employment, within the meaning of Section 515 of the
7 Labor Code, by the qualified employer.

8 ~~(3)~~

9 (2) A “qualified *full-time* employee” shall not include any of
10 the following:

11 (A) An employee certified as a qualified employee in an
12 enterprise zone designated in accordance with Chapter 12.8
13 (commencing with Section 7070) of Division 7 of Title 1 of the
14 Government Code.

15 (B) An employee certified as a qualified disadvantaged
16 individual in a manufacturing enhancement area designated in
17 accordance with Section 7073.8 of the Government Code.

18 (C) An employee certified as a qualified employee in a targeted
19 tax area designated in accordance with Section 7097 of the
20 Government Code.

21 (D) An employee whose wages are included in calculating any
22 other credit allowed under this part.

23 ~~(4)~~

24 (3) “Qualified employer” means a taxpayer that is primarily
25 engaged in the lines of business classified in Code 339113 of the
26 North American Industry Classification System (NAICS) published
27 by the United States Office of Management and Budget (OMB),
28 2012 edition.

29 ~~(5)~~

30 (4) “Qualified wages” means wages subject to Division 6
31 (commencing with Section 13000) of the Unemployment Insurance
32 Code.

33 ~~(6)~~

34 (5) “Annual full-time equivalent” means either of the following:

35 (A) In the case of a full-time employee paid hourly qualified
36 wages, “annual full-time equivalent” means the total number of
37 hours worked for the taxpayer by the employee (not to exceed
38 2,000 hours per employee) divided by 2,000.

1 (B) In the case of a salaried full-time employee, “annual
2 full-time equivalent” means the total number of weeks worked for
3 the taxpayer by the employee divided by 52.

4 (c) The net increase in qualified full-time employees of a
5 qualified employer shall be determined as provided by this
6 subdivision:

7 (1) (A) The net increase in qualified full-time employees shall
8 be determined on an annual full-time equivalent basis by
9 subtracting from the amount determined in subparagraph (C) the
10 amount determined in subparagraph (B).

11 (B) The total number of qualified full-time employees employed
12 in the preceding taxable year by the taxpayer and by any trade or
13 business acquired by the taxpayer during the current taxable year.

14 (C) The total number of full-time employees employed in the
15 current taxable year by the taxpayer and by any trade or business
16 acquired during the current taxable year.

17 (2) For taxpayers who first commence doing business in this
18 state during the taxable year, the number of full-time employees
19 for the immediately preceding prior taxable year shall be zero.

20 (d) In the case where the credit allowed by this section exceeds
21 the “tax,” the excess may be carried over to reduce the “tax” in
22 the following year, and succeeding seven years if necessary, until
23 the credit is exhausted.

24 (e) Any deduction otherwise allowed under this part for qualified
25 wages shall not be reduced by the amount of the credit allowed
26 under this section.

27 (f) For purposes of this section:

28 (1) All employees of the trades or businesses that are treated as
29 related under either Section 267, 318, or 707 of the Internal
30 Revenue Code shall be treated as employed by a single taxpayer.

31 (2) In determining whether the taxpayer has first commenced
32 doing business in this state during the taxable year, the provisions
33 of subdivision (g) of Section 24416.20, without application of
34 paragraph (7) of that subdivision, shall apply.

35 (g) (1) (A) Credit under this section and Section 17053.81 shall
36 be allowed only for credits claimed on timely filed original returns
37 received by the Franchise Tax Board on or before the cut-off date
38 established by the Franchise Tax Board.

39 (B) For purposes of this paragraph, the cut-off date shall be the
40 last day of the calendar quarter within which the Franchise Tax

1 Board estimates it will have received timely filed original returns
2 claiming credits under this section and Section 17053.81 that
3 cumulatively total ~~one hundred million dollars (\$100,000,000)~~
4 *twenty-five million dollars (\$25,000,000)* for all taxable years.

5 (2) The date a return is received shall be determined by the
6 Franchise Tax Board.

7 (3) (A) The determinations of the Franchise Tax Board with
8 respect to the cut-off date, the date a return is received, and whether
9 a return has been timely filed for purposes of this subdivision may
10 not be reviewed in any administrative or judicial proceeding.

11 (B) Any disallowance of a credit claimed due to a determination
12 under this subdivision, including the application of the limitation
13 specified in paragraph (1), shall be treated as a mathematical error
14 appearing on the return. Any amount of tax resulting from such
15 disallowance may be assessed by the Franchise Tax Board in the
16 same manner as provided by Section 19051.

17 (4) The Franchise Tax Board shall periodically provide notice
18 on its Internet Web site with respect to the amount of credit under
19 this section and Section 17053.81 claimed on timely filed original
20 returns received by the Franchise Tax Board.

21 (h) (1) The Franchise Tax Board may prescribe rules,
22 guidelines, or procedures necessary or appropriate to carry out the
23 purposes of this section, including any guidelines regarding the
24 limitation on total credits allowable under this section and Section
25 17053.81 and guidelines necessary to avoid the application of
26 paragraph (2) of subdivision (f) through split-ups, shell
27 corporations, partnerships, tiered ownership structures, or
28 otherwise.

29 (2) Chapter 3.5 (commencing with Section 11340) of Part 1 of
30 Division 3 of Title 2 of the Government Code does not apply to
31 any standard, criterion, procedure, determination, rule, notice, or
32 guideline established or issued by the Franchise Tax Board
33 pursuant to this section.

34 (i) This section shall remain in effect only until December 1 of
35 the calendar year after the year of the cut-off date, and as of that
36 December 1 is repealed.

1 ~~SEC. 3.~~

2 *SEC. 4.* This act provides for a tax levy within the meaning of

3 Article IV of the Constitution and shall go into immediate effect.

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